



January 23, 2004

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## SENATE BILL No. 232

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DIGEST OF SB 232 (Updated January 20, 2004 12:01 pm - DI 110)

**Citations Affected:** IC 25-34.1.

**Synopsis:** Real estate brokers and salespersons. Provides that an out-of-state commercial broker or salesperson licensed in another state may practice in Indiana without an Indiana license if the out-of-state commercial broker or salesperson meets certain requirements. Establishes an exception to the requirement that a broker must be a resident of Indiana.

**Effective:** July 1, 2004.

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### Server

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January 8, 2004, read first time and referred to Committee on Commerce and Consumer Affairs.  
January 22, 2004, reported favorably — Do Pass.

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SB 232—LS 7061/DI 110+



January 23, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

## SENATE BILL No. 232

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A BILL FOR AN ACT to amend the Indiana Code concerning professions and occupations.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 25-34.1-1-2 IS AMENDED TO READ AS  
2       FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. As used in this  
3       article:

4       "Person" means an individual, a partnership, a corporation, or a  
5       limited liability company.

6       "Commission" means the Indiana real estate commission.

7       "Real estate" means any right, title, or interest in real property.

8       "Broker" means a person who, for consideration, sells, buys, trades,  
9       exchanges, options, leases, rents, manages, lists, or appraises real estate  
10      or negotiates or offers to perform any of those acts.

11      "Salesperson" means an individual, other than a broker, who, for  
12      consideration and in association with and under the auspices of a  
13      broker, sells, buys, trades, exchanges, options, leases, rents, manages,  
14      or lists real estate or negotiates or offers to perform any of those acts.

15      "Broker-salesperson" means an individual broker who is acting in  
16      association with and under the auspices of another broker.

17      "Principal broker" means a broker who is not acting as a

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broker-salesperson.

"License" means a broker or salesperson license issued under this article and which is not expired, suspended, or revoked.

"Licensee" means a person who holds a license issued under this article. The term does not include a person who holds a real estate appraiser license or certificate issued under the real estate appraiser licensure and certification program established under IC 25-34.1-3-8.

"Course approval" means approval of a broker or salesperson course granted under this article which is not expired, suspended, or revoked.

"Licensing agency" means the Indiana professional licensing agency established by IC 25-1-6-3.

"Board" refers to the real estate appraiser licensure and certification board established under IC 25-34.1-8-1.

**"Suspended" means the license status that prohibits a licensee from providing services that require a license under this article.**

**"Reactivate" means the process prescribed by the commission to remove a licensee from an inactive, a suspended, or a similarly limited status to allow a licensee to provide services that require a license under this article.**

**"Revoked" means the license status in which the license is void and not eligible for reactivation.**

**"Commercial real estate" means a parcel of real estate other than real estate containing one (1) to four (4) residential units. This term does not include single family residential units such as:**

**(1) condominiums;**

**(2) townhouses;**

**(3) manufactured homes; or**

**(4) homes in a subdivision when sold, leased, or otherwise conveyed on a unit by unit basis, even if those units are part of a larger building or parcel of real estate containing more than four (4) residential units.**

**"Out-of-state commercial broker" includes a person, a partnership, an association, a limited liability company, a limited liability partnership, or a corporation that is licensed to do business as a broker in a jurisdiction other than Indiana.**

**"Out-of-state commercial salesperson" includes a person affiliated with an out-of-state commercial broker who is not licensed as a salesperson under this article.**

SECTION 2. IC 25-34.1-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) Except as provided in:

(1) subsection (b); ~~and~~

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(2) section 8(i) of this chapter; **and**

**(3) section 11 of this chapter;**

no person shall, for consideration, sell, buy, trade, exchange, option, lease, rent, manage, list, or appraise real estate or negotiate or offer to perform any of those acts in Indiana or with respect to real estate situated in Indiana, without a license.

(b) This article does not apply to:

(1) acts of an attorney which constitute the practice of law;

(2) performance by a public official of acts authorized by law;

(3) acts of a receiver, executor, administrator, commissioner, trustee, or guardian, respecting real estate owned or leased by the person represented, performed pursuant to court order or a will;

(4) rental, for periods of less than thirty (30) days, of rooms, lodging, or other accommodations, by any commercial hotel, motel, tourist facility, or similar establishment which regularly furnishes such accommodations for consideration;

(5) rental of residential apartment units by an individual employed or supervised by a licensed broker;

(6) rental of apartment units which are owned and managed by a person whose only activities regulated by this article are in relation to a maximum of twelve (12) apartment units which are located on a single parcel of real estate or on contiguous parcels of real estate;

(7) referral of real estate business by a broker, salesperson, or referral company which is licensed under the laws of another state, to or from brokers and salespersons licensed by this state;

(8) acts performed by a person in relation to real estate owned by that person unless that person is licensed under this article, in which case the article does apply to him;

(9) acts performed by a regular, full-time, salaried employee of a person in relation to real estate owned or leased by that person unless the employee is licensed under this article, in which case the article does apply to him;

(10) conduct of a sale at public auction by a licensed auctioneer pursuant to IC 25-6.1;

(11) sale, lease, or other transfer of interests in cemetery lots; and

(12) acts of a broker or salesperson, who is licensed under the laws of another state, which are performed pursuant to, and under restrictions provided by, written permission that is granted by the commission in its sole discretion, except that such a person shall comply with the requirements of section 5(c) of this chapter.

SECTION 3. IC 25-34.1-3-11 IS ADDED TO THE INDIANA

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CODE AS A NEW SECTION TO READ AS FOLLOWS  
 [EFFECTIVE JULY 1, 2004]: Sec. 11. (a) An out-of-state  
 commercial broker, for a fee, commission, or other valuable  
 consideration, or in expectation, or upon the promise of receiving  
 or collecting a fee, commission, or other valuable consideration,  
 may perform acts with respect to commercial real estate that  
 require a license under this article without a license under this  
 article, if the out-of-state commercial broker does all of the  
 following:

(1) Works in cooperation with a broker who holds a valid  
 license issued under this article.

(2) Enters into a written agreement with the broker described  
 in subdivision (1) that includes the terms of cooperation and  
 compensation and a statement that the out-of-state  
 commercial broker and the broker's agents will comply with  
 the laws of this state.

(3) Furnishes the broker described in subdivision (1) with a  
 copy of the out-of-state commercial broker's current  
 certificate of good standing from a jurisdiction where the  
 out-of-state commercial broker maintains a valid real estate  
 license.

(4) Files an irrevocable written consent with the broker  
 described in subdivision (1) that legal actions arising out of  
 the conduct of the out-of-state commercial broker or the  
 broker's agents may be commenced against the out-of-state  
 commercial broker in a court with jurisdiction in a county in  
 Indiana in which the cause of action accrues.

(5) Advertises in compliance with state law and includes the  
 name of the broker described in subdivision (1) in all  
 advertising.

(6) Deposits all escrow funds, security deposits, and other  
 money received by either the out-of-state commercial broker  
 or the broker described in subdivision (1) in a trust  
 maintained by the broker described in subdivision (1).

(7) Deposits all documentation required by this section and  
 records and documents related to the transaction with the  
 broker described in subdivision (1).

(b) The broker described in subsection (a)(1) shall retain the  
 documentation that is provided by the out-of-state commercial  
 broker as required under this section, and the records and  
 documents related to a transaction, for a period of five (5) years  
 after the later of the date the documentation is provided or the

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transaction occurs.

(c) An out-of-state commercial salesperson may perform acts with respect to commercial real estate that require a real estate salesperson licensed under this article without a license under this article, if the out-of-state commercial salesperson meets all of the following requirements:

(1) The out-of-state commercial salesperson:

(A) is licensed with and works under the direct supervision of the out-of-state commercial broker;

(B) provides the broker described in subsection (a)(1) with a copy of the out-of-state commercial salesperson's current certificate of good standing from the jurisdiction where the out-of-state commercial salesperson maintains a valid real estate license in connection with the out-of-state commercial broker; and

(C) collects money, including:

(i) commissions;

(ii) deposits;

(iii) payments; or

(iv) rentals;

only in the name of and with the consent of the out-of-state commercial broker under whom the out-of-state commercial salesperson is licensed.

(2) The out-of-state commercial broker described in subdivision (1)(A) meets all of the requirements of subsection (a).

(d) A person licensed in a jurisdiction where there is not a legal distinction between a real estate broker license and a real estate salesperson license must meet the requirements of subsection (a) before engaging in an act that requires a license under this article.

(e) An out-of-state commercial broker or salesperson acting under this section shall file a written consent as provided in IC 25-24.1-3-5(c).

SECTION 4. IC 25-34.1-3-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 12. (a) The commission may issue a broker's license to a broker who is a resident of another state under the following conditions:**

(1) The broker holds a broker's license in the broker's state of domicile.

(2) The licensing standards for a broker in the other state are:

(A) substantially equivalent to; or

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(B) greater than;

the minimum standards under this article.

(3) The broker has been practicing as a broker in the broker's state of domicile for at least two (2) years immediately before the date the broker files an application for licensure under this article.

(4) The broker furnishes the commission with a statement from the licensing authority of the state in which the broker is licensed that shows the broker:

(A) has an active broker's license;

(B) is in good standing; and

(C) has no complaints pending against the broker; in the other state.

(5) The broker passes a written examination on Indiana real estate licensure laws.

(6) The commission has a reciprocal agreement or a memorandum of understanding for interjurisdictional cooperation with the other state that includes the provisions of this section.

(b) The commission may issue a nonresident salesperson license to a nonresident salesperson under the following conditions:

(1) The salesperson:

(A) is employed by or associated with a nonresident broker holding a broker's license under this section;

(B) maintains a valid license in the state in which the salesperson is domiciled;

(C) is domiciled in the same state as the broker with whom the salesperson is associated; and

(D) passes a written examination on Indiana real estate licensure laws.

(2) The commission has a reciprocal agreement or a memorandum of understanding for interjurisdictional cooperation with the other state that includes the provisions of this section.

(c) A license previously granted under a reciprocal agreement or a memorandum of understanding for interjurisdictional cooperation with another state shall remain in force as long as the commission has a reciprocal agreement or a memorandum of understanding for interjurisdictional cooperation with the state that includes the requirements of this section, unless that license is suspended, revoked, or terminated by the commission.

(d) A license granted under a reciprocal agreement or a

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1 memorandum of understanding for interjurisdictional cooperation  
2 may be renewed in the same manner as a resident broker's or a  
3 resident salesperson's license.

4 (e) A person holding a valid license under this section is eligible  
5 to obtain a resident broker's or salesperson's license without a  
6 written examination if the person:

7 (1) changes the person's state of domicile to Indiana; and

8 (2) the person meets the qualifications for licensure under this  
9 article.

10 (f) A person applying for a license under this section shall file a  
11 written consent with the commission as provided in  
12 IC 25-34.1-3-5(c).

13 (g) A person applying for a license under this section shall pay  
14 the applicable licensing fee.

15 SECTION 5. IC 25-34.1-4-3 IS AMENDED TO READ AS  
16 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) **Except as**  
17 **provided in IC 25-34.1-3-12**, each individual who is a principal broker  
18 or is designated by a partnership, corporation, or a limited liability  
19 company pursuant to section 2 of this chapter shall be a resident of  
20 Indiana.

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## COMMITTEE REPORT

Madam President: The Senate Committee on Commerce and Consumer Affairs, to which was referred Senate Bill No. 232, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 232 as introduced.)

SERVER, Chairperson

Committee Vote: Yeas 6, Nays 0.

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